



OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2021–0003]

Notice of Action in the Section 301 Investigation of India’s Digital Services Tax

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice.

SUMMARY: On January 6, 2021, the U.S. Trade Representative announced a determination that India’s Digital Services Tax (DST) is unreasonable or discriminatory and burdens or restricts U.S. commerce. This notice announces the U.S. Trade Representative’s determination to take action in the form of additional duties of 25 percent on the products of India specified in Annex A to this notice. The U.S. Trade Representative has further determined to suspend application of the additional duties for a period of up to 180 days.

DATES:

June 2, 2021: The U.S. Trade Representative determined to take action in the form of additional duties of 25 percent on products of India specified in Annex A.

November 29, 2021: The end of the 180-day suspension period for the additional duties.

FOR FURTHER INFORMATION CONTACT: For questions concerning the investigation, please contact Benjamin Allen, Thomas Au, or Patrick Childress, Assistant General Counsels at: (202) 395-9439, (202) 395-0380, and (202) 385-9531, respectively; Robert Tanner, Director, Services and Investment at (202) 395-6125; or Brendan Lynch, Deputy Assistant U.S. Trade Representative for South and Central Asian Affairs at (202) 395-2851. For specific questions on customs classification or implementation of additional duties on products, contact traderemedymail@cbp.gov.

SUPPLEMENTARY INFORMATION:

I. Proceedings in the Investigation

India has adopted a DST that imposes a two percent tax on revenue generated from a broad range of digital services offered in India, including digital platform services, digital content sales, digital sales of a company's own goods, data-related services, software-as-a-service, and several other categories of digital services. India's DST only applies to "non-resident" companies. On June 2, 2020, the U.S. Trade Representative initiated an investigation of India's DST pursuant to section 302(b)(1)(A) of the Trade Act of 1974, as amended (Trade Act). *See* 85 FR 34709 (June 5, 2020) (notice of initiation). The notice of initiation solicited written comments on, *inter alia*, the following aspects of India's DST: discrimination against U.S. companies; retroactivity; and possibly unreasonable tax policy. With respect to tax policy, USTR solicited comments on, *inter alia*, whether the DST diverged from principles reflected in the U.S. and international tax systems including extraterritoriality; taxing revenue not income; and a purpose of penalizing particular technology companies for their commercial success. Interested persons filed over 380 written submissions in response. The public submissions are available on www.regulations.gov in docket number USTR-2020-0022.

Under section 303 of the Trade Act, the U.S. Trade Representative requested consultations with the government of India regarding the issues involved in the investigation. Consultations were held on November 5, 2020. Based on information obtained during the investigation, USTR prepared a comprehensive report on India's DST, which is posted on the USTR website at <https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-digital-services-taxes>. The report includes a full description of India's DST, and supports findings that India's DST is unreasonable and discriminatory and burdens or restricts U.S. commerce. On January 6, 2021, based on the information obtained during the investigation and the advice of the Section 301 Committee, the U.S. Trade Representative determined that India's DST is unreasonable or discriminatory and burdens or restricts U.S. commerce, and therefore is

actionable under sections 301(b) and 304(a) of the Trade Act. *See* 86 FR 2478 (January 12, 2021).

On March 31, 2021, USTR issued a notice proposing that appropriate action would include additional *ad valorem* duties of up to 25 percent on products of India to be drawn from a list of 40 tariff subheadings of the Harmonized Tariff Schedule of the United States (HTSUS) included in the annex to that notice. The March 31, 2021 notice requested comments on the proposed action as well as on other potential actions in the investigation. Witnesses provided testimony at public hearings held on May 3 and May 10, 2021, and interested persons filed written comments. Transcripts from the hearings are available on the USTR website at: <https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-digital-services-taxes>. The written public submissions are available at: <https://comments.ustr.gov/s/docket?docketNumber=USTR-2021-0003> and <https://comments.ustr.gov/s/docket?docketNumber=USTR-2021-0008>.

II. Determination of Action To Be Taken in the Investigation

In accordance with section 301(b) of the Trade Act, the U.S. Trade Representative has determined that action is appropriate in this investigation. Section 301(b) provides that upon determining that the acts, policies, and practices under investigation are actionable and that action is appropriate, the U.S. Trade Representative shall take all appropriate and feasible action authorized under section 301(c) of the Trade Act, subject to the specific direction, if any, of the President regarding such action, and all other appropriate and feasible action within the power of the President that the President may direct the U.S. Trade Representative to take under section 301(b), to obtain the elimination of that act, policy, or practice. Section 304(a)(2)(B) provides that the U.S. Trade Representative shall make the determination of what action to take on or before the date that is 12 months after the date on which the investigation was initiated, or in this case, by June 2, 2021.

Pursuant to sections 301(b) and (c) of the Trade Act, and in accordance with the advice of the Section 301 Committee, the U.S. Trade Representative has determined that appropriate action is the imposition of *ad valorem* duties of 25 percent on products of India specified in Annex A to this notice. Annex A contains a list of 26 tariff subheadings, with an estimated trade value for calendar year 2019 of approximately \$119 million. In making this determination, the U.S. Trade Representative considered the public comments submitted in the investigation, as well as advice of advisory committees. In determining the level of trade covered by the additional duties, the U.S. Trade Representative considered the value of digital transactions covered by India's DST and the amount of taxes assessed by India on U.S. companies. Estimates indicate that the value of the DST payable by U.S.-based company groups to India will be up to approximately \$55 million per year. The level of trade covered by the action takes into account estimates of the amount of tariffs to be collected on goods of India and the estimates of the amount of taxes assessed by India.

Section 305(a) of the Trade Act provides, in pertinent part, that the U.S. Trade Representative may delay implementation of the action to be taken for up to 180 days "if the Trade Representative determines ... that a delay is necessary or desirable ... to obtain ... [a] satisfactory solution with respect to the acts, policies, or practices that are the subject of the action." Pursuant to section 305(a), the U.S. Trade Representative has determined to suspend the additional duties for up to 180 days (that is, up to November 29, 2021) to allow additional time for multilateral and bilateral discussions that could lead to a satisfactory resolution of this matter.

In order to implement this determination, subchapter III of chapter 99 of the HTSUS is modified by Annex A of this notice. Annex A is effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on November 29, 2021, which is 180 days after the

determination of action. In the event the U.S. Trade Representative determines that the suspension of the additional duties should be for less than a period of 180 days, USTR will issue a subsequent notice amending the effective date. For informational purposes, Annex B contains a list of the tariff subheadings covered by the tariff action along with short product descriptions. In all cases, the formal language in Annex A governs the tariff treatment of products covered by the action. As specified in Annex A, products provided for in new HTSUS heading 9903.90.03 will be subject to an additional *ad valorem* duty of 25 percent. The additional duties provided for in the new HTSUS heading established by Annex A apply in addition to all other applicable duties, fees, exactions, and charges. Any product listed in Annex A, except any product that is eligible for admission under ‘domestic status’ as defined in 19 CFR 146.43, which is subject to the additional duty imposed by this determination, and is admitted into a U.S. foreign trade zone on or after 12:01 a.m. eastern standard time on November 29, 2021, only may be admitted as ‘privileged foreign status’ as defined in 19 CFR 146.41. Such products will be subject upon entry for consumption to any *ad valorem* rates of duty or quantitative limitations related to the classification under the applicable HTSUS subheading.

The U.S. Trade Representative will continue to monitor the effect of the trade action, the progress of discussions in the Organisation for Economic Co-operation and Development and G20, the progress of discussions with India, and may adopt appropriate modifications. If a modification to the action may be appropriate, the U.S. Trade Representative will consider the comments received in response to the March 31, 2021 notice.

Greta Peisch,

General Counsel,

Office of the United States Trade Representative.

ANNEX A

Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on November 29, 2021, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:

1. by inserting the following new U.S. notes 24(a) and 24(b) to subchapter III of chapter 99 in numerical sequence:

“24 (a) For the purposes of heading 9903.90.03, products of India, as specified in this note, shall be subject to additional duties as provided herein. All products of India that are classified in the subheadings enumerated in this note are subject to the additional duties imposed by heading 9903.90.03. The duties imposed by heading 9903.90.03 shall be in addition to the general duty rates provided for in the applicable provisions of the tariff schedule.

Products of India that are classified in the subheadings enumerated in this note and that are eligible for temporary duty exemptions or reductions under subchapter II to chapter 99 shall be subject to the additional duties imposed by heading 9903.90.03, and any such duty exemption or reduction shall apply only to the permanent general rate prescribed in provisions of chapters 1 through 97 of the tariff schedule.

The additional duties imposed by heading 9903.90.03 do not apply to goods for which entry is properly claimed under a provision of chapter 98 of the HTSUS, except for goods entered under subheadings 9802.00.40, 9802.00.50 and 9802.00.60 and heading 9802.00.80. For subheadings 9802.00.40, 9802.00.50 and 9802.00.60, the additional duties apply to the value of repairs, alterations or processing performed in India and as described in the applicable subheading. For heading 9802.00.80, the additional duties apply to the value of the article less the cost or value of such products of the United States, as described in heading 9802.00.80.

Products of India that are provided for in heading 9903.90.03 and classified in one of the subheadings enumerated in note 24(b) to this subchapter shall continue to be subject to antidumping, countervailing or other duties (including duties imposed by other provisions of subchapter III of this chapter and safeguard duties set forth in provisions of subchapter IV of this chapter), fees, exactions and charges that apply to such products, as well as to the additional duties imposed herein.

- (b) Heading 9903.90.03 shall apply to all products of India that are classified in the subheadings enumerated below:

0306.16.00	4421.91.40	4813.90.00
0306.35.00	4421.91.94	7101.22.30
0306.95.00	4503.10.40	7101.22.60
1006.20.20	4813.10.00	7103.99.50

7104.90.50	7116.20.15	9401.69.80
7113.19.21	7410.21.30	9403.50.40
7113.19.25	9401.69.20	9403.50.90
7114.20.00	9401.69.40	9403.83.00”.
7116.20.05	9401.69.60	

2. by inserting the following new heading 9903.90.03 in numerical sequence, with the material in the new heading inserted in the columns of the HTSUS labeled “Heading/Subheading”, “Article Description”, and “Rates of Duty 1-General”, respectively:

Heading/ Subheading		Article Description	Rates of Duty		
			1		2
			General	Special	
“9903.90.03		“Articles the product of India, as provided for in U.S. note 24(a) to this subchapter and as provided for in the subheadings enumerated in U.S. note 24(b) to this subchapter	The duty provided in the applicable subheading + 25%”.		

Annex B

Note: The product descriptions that are contained in this Annex are provided for informational purposes only, and are not intended to delimit in any way the scope of the action. In all cases, the formal language in Annex A governs the tariff treatment of products covered by the action. Any questions regarding the scope of particular HTSUS subheadings should be referred to U.S. Customs and Border Protection. In the product descriptions, the abbreviation "nesoi" means "not elsewhere specified or included".

HTSUS Subheading	Product Description
0306.16.00	Cold-water shrimps and prawns, cooked in shell or uncooked, dried, salted or in brine, frozen
0306.35.00	Cold water shrimps and prawns, shell-on or peeled, live, or chilled
0306.95.00	Other shrimps and prawns, shell-on or peeled
1006.20.20	Basmati rice, husked
4421.91.40	Blinds, shutters, screens and shades of bamboo, other than those with wooden frames in the center of which are fixed louver boards or slats
4421.91.94	Edge-glued lumber of bamboo
4503.10.40	Corks and stoppers of natural cork, tapered & of a thickness (or length) greater than the maximum diam., over 19 mm maximum diam., nesoi
4813.10.00	Cigarette paper in the form of booklets or tubes
4813.90.00	Cigarette paper, whether or not cut to size, nesoi
7101.22.30	Cultured pearls, worked, graded and temporarily strung for convenience of transport
7101.22.60	Cultured pearls, worked, not strung, mounted or set
7103.99.50	Precious or semiprecious stones, nesoi, worked, whether or not graded, but n/strung (ex. ungraded temporarily strung), mtd. or set
7104.90.50	Synth. or reconstruct. precious or semiprecious stones, wkd, whether or not graded, but n/strung (ex. ungraded temp. strung), mtd./set, nesoi
7113.19.21	Gold rope necklaces and neck chains
7113.19.25	Gold mixed link necklaces and neck chains
7114.20.00	Goldsmiths' or silversmiths' wares of base metal clad with precious metal
7116.20.05	Jewelry articles of precious or semiprecious stones, valued not over \$40 per piece
7116.20.15	Jewelry articles of precious or semiprecious stones, valued over \$40 per piece
7410.21.30	Refined copper foil, clad laminates, w/thickness of 0.15 mm or less, backed
9401.69.20	Seats nesoi, of bent-wood
9401.69.40	Chairs nesoi, w/teak frames, not upholstered
9401.69.60	Chairs nesoi, w/wooden frames (o/than teak), not upholstered
9401.69.80	Seats (o/than chairs) nesoi, w/wooden frames, not upholstered
9403.50.40	Furniture (o/than 9401 or 9402) of bentwood nesoi, of a kind used in the bedroom
9403.50.90	Furniture (o/than 9401 or 9402) of wood (o/than bentwood), of a kind used in the bedroom & not designed for motor vehicle use
9403.83.00	Rattan furniture and parts thereof

